

§ 232.7

unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.

Tourist, scenic, historic, or excursion operations are railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose.

Train means one or more locomotives coupled with one or more freight cars, except during switching service.

Train line means the brake pipe or any non-pneumatic system used to transmit the signal that controls the locomotive and freight car brakes.

Train line cable is a two-conductor electric wire spanning the train and carrying both electrical power to operate all CCDs and ECP-EOT devices and communications network signals.

Train, unit or train, cycle means a train that, except for the changing of locomotive power or for the removal or replacement of defective equipment, remains coupled as a consist and operates in a continuous loop or continuous loops without destination.

Transfer train means a train that travels between a point of origin and a point of final destination not exceeding 20 miles. Such trains may pick up or deliver freight equipment while en route to destination.

Yard air means a source of compressed air other than from a locomotive.

Yard limits means a system of tracks, not including main tracks and sidings, used for classifying cars, making-up and inspecting trains, or storing cars and equipment.

[66 FR 4193, Jan. 17, 2001, as amended at 67 FR 17580, Apr. 10, 2002; 73 FR 61552, Oct. 16, 2008]

§ 232.7 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

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(b) Each petition for waiver must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary. If a waiver is granted, the Administrator publishes a notice in the FEDERAL REGISTER containing the reasons for granting the waiver.

§ 232.9 Responsibility for compliance.

(a) A railroad subject to this part shall not use, haul, permit to be used or hauled on its line, offer in interchange, or accept in interchange any train, railroad car, or locomotive with one or more conditions not in compliance with this part; however, a railroad shall not be liable for a civil penalty for such action if such action is in accordance with § 232.15. For purposes of this part, a train, railroad car, or locomotive will be considered in use prior to departure but after it has received, or should have received, the inspection required for movement and is deemed ready for service.

(b) Although many of the requirements of this part are stated in terms of the duties of a railroad, when any person performs any function required by this part, that person (whether or not a railroad) is required to perform that function in accordance with this part.

(c) Any person performing any function or task required by this part shall be deemed to have consented to FRA inspection of the person's operation to the extent necessary to determine whether the function or task is being performed in accordance with the requirements of this part.

§ 232.11 Penalties.

(a) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement

of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$650, but not more than \$25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule.

(b) Any person who knowingly and willfully falsifies a record or report required by this part is subject to criminal penalties under 49 U.S.C. 21311.

[66 FR 4193, Jan. 17, 2001, as amended at 69 FR 30594, May 28, 2004; 72 FR 51197, Sept. 6, 2007; 73 FR 79703, Dec. 30, 2008]

§ 232.13 Preemptive effect.

(a) Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, rule, regulation, order or standard covering the same subject matter, except for a provision necessary to eliminate or reduce a local safety hazard if that provision is not incompatible with this part and does not impose an undue burden on interstate commerce. Nothing in this paragraph shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part, has failed to comply with its own plan, rule, or standard that it created pursuant to this part, or has failed to comply with a State law, regulation, or order that is not incompatible with the first sentence of this paragraph.

(b) Preemption should also be considered pursuant to the Locomotive Boiler Inspection Act (now codified at 49 U.S.C. 20701–20703), the Safety Appliance Acts (now codified at 49 U.S.C. 20301–20304), and the Commerce Clause based on the relevant case law pertaining to preemption under those provisions.

(c) FRA does not intend by issuance of the regulations in this part to pre-

empt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

[66 FR 4193, Jan. 17, 2001, as amended at 73 FR 61552, Oct. 16, 2008]

§ 232.15 Movement of defective equipment.

(a) *General provision.* Except as provided in paragraph (c) of this section, a railroad car or locomotive with one or more conditions not in compliance with this part may be used or hauled without civil penalty liability under this part only if *all* of the following conditions are met:

(1) The defective car or locomotive is properly equipped in accordance with the applicable provisions of 49 U.S.C. chapter 203 and the requirements of this part.

(2) The car or locomotive becomes defective while it is being used by the railroad on its line or becomes defective on the line of a connecting railroad and is properly accepted in interchange for repairs in accordance with paragraph (a)(7) of this section.

(3) The railroad first discovers the defective condition of the car or locomotive prior to moving it for repairs.

(4) The movement of the defective car or locomotive for repairs is from the location where the car or locomotive is first discovered defective by the railroad.

(5) The defective car or locomotive cannot be repaired at the location where the railroad first discovers it to be defective.

(6) The movement of the car or locomotive is necessary to make repairs to the defective condition.

(7) The location to which the car or locomotive is being taken for repair is the nearest available location where necessary repairs can be performed on the line of the railroad where the car or locomotive was first found to be defective or is the nearest available location where necessary repairs can be performed on the line of a connecting railroad if: